

Robert J. Giuffra, Jr. (*admitted pro hac vice*)  
 giuffrar@sullcrom.com  
 Sharon L. Nelles (*admitted pro hac vice*)  
 nelless@sullcrom.com  
 William B. Monahan (*admitted pro hac vice*)  
 monahanw@sullcrom.com  
 John G. McCarthy (*admitted pro hac vice*)  
 mccarthyj@sullcrom.com  
 SULLIVAN & CROMWELL LLP  
 125 Broad Street  
 New York, New York 10004  
 Telephone: (212) 558-4000  
 Facsimile: (212) 558-3588

Michael H. Steinberg (SBN 134179)  
 steinbergm@sullcrom.com  
 SULLIVAN & CROMWELL LLP  
 1888 Century Park East  
 Los Angeles, California 90067  
 Telephone: (310) 712-6600  
 Facsimile: (310) 712-8800

*Attorneys for Defendants Volkswagen AG and  
 Volkswagen Group of America, Inc.*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
 MARKETING, SALES PRACTICES, AND  
 PRODUCTS LIABILITY LITIGATION

)  
 ) MDL No. 2672 CRB (JSC)  
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 This Document Relates to:

ACTIONS SET FOR  
 FEBRUARY 18, 2020 TRIAL

) **DECLARATION OF WILLIAM B.**  
 ) **MONAHAN IN SUPPORT OF**  
 ) **DEFENDANTS’ MOTION TO**  
 ) **DISQUALIFY PLAINTIFFS’ EXPERT**  
 ) **LOUIS J. FREEH AND EXCLUDE HIS**  
 ) **PROPOSED TESTIMONY AT TRIAL**

)  
 ) The Honorable Charles R. Breyer  
 )  
 )

1 WILLIAM B. MONAHAN hereby declares under penalty of perjury as follows:

2 1. I am a member of the Bar of the State of New York and of Sullivan & Cromwell  
3 LLP, counsel in the above-captioned action for Defendants Volkswagen Group of America, Inc. and  
4 Volkswagen AG (“Defendants”). I have been admitted *pro hac vice* to appear in this action.

5 2. I submit this Declaration on behalf of the Defendants to put before the Court  
6 certain documents and other evidence cited in Defendants’ Motion to Disqualify Plaintiffs’ Expert Louis  
7 J. Freeh and Exclude His Proposed Testimony at Trial, filed concurrently herewith.

8 3. Attached hereto as Exhibit 1 is a true and correct copy of the expert report of Louis  
9 J. Freeh (excluding exhibits), dated December 2, 2019.

10 4. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the  
11 December 23, 2019 deposition of Mr. Freeh.

12 5. Attached hereto as Exhibit 3 is a true and correct copy of a draft engagement letter,  
13 dated January 6, 2016, emailed by Mr. Freeh to Christine Hohmann-Dennhardt, the former Volkswagen  
14 AG Management Board Member responsible for Compliance and Legal, bearing production numbers  
15 K VW\_00000235–K VW\_00000240. This document is accompanied by a true and correct copy of a  
16 certified English translation.

17 6. Attached hereto as Exhibit 4 is a true and correct copy of the transcript from the  
18 April 21, 2017 sentencing hearing in *United States v. Volkswagen AG*, No. 2:16-cr-20394 (E.D. Mich.,  
19 Cox, J.).

20 7. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the  
21 Criminal Complaint filed on December 30, 2016 in *United States v. Schmidt*, 2:16-mj-30588 (E.D.  
22 Mich.), Dkt. No. 1.

23 8. Attached hereto as Exhibit 6 is a true and correct copy the Rule 11 plea agreement  
24 in *United States v. Volkswagen AG*, No. 2:16-cr-20394 (E.D. Mich., Cox, J.), dated January 11, 2017.

25 9. Attached hereto as Exhibit 7 is a true and correct copy of a January 2, 2016 email  
26 exchange between Mr. Freeh and Ms. Hohmann-Dennhardt, bearing production numbers  
27 K VW\_00000449–K VW\_00000450.  
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10. Attached hereto as Exhibit 8 is a true and correct copy of an *Automotive News* article entitled “VW Will Hire Ex-FBI Chief Freeh for U.S. Role, Report Says,” dated January 19, 2016.

11. Attached hereto as Exhibit 9 is a true and correct copy of a *Suddeutsche Zeitung* article entitled “Warum Volkswagen auf einen früheren FBI-Chef hofft,” dated January 18, 2016. This document is accompanied by a true and correct copy of a certified English translation.

12. Attached hereto as Exhibit 10 is a true and correct copy of a *Handelsblatt* publication entitled “Louis Freeh und Olaf Schneider; ‘Das Pendel ist zu weit ausgeschlagen’,” dated February 22, 2017. This document is accompanied by a true and correct copy of a certified English translation.

13. Attached hereto as Exhibit 11 is a true and correct copy of a text message sent by Mr. Freeh to Manfred Doess, the General Counsel of Volkswagen AG, dated December 15, 2016.

14. Attached hereto as Exhibit 12 is a true and correct copy of a May 7, 2019 press release issued by Glaser Weil LLP, co-counsel for Plaintiffs in this action, entitled “Louis Freeh and Glaser Weil Enter Into Strategic Alliance,” bearing production numbers GWPROD\_000001–GWPROD\_000002.

15. Attached hereto as Exhibit 13 is a true and correct copy of the New York State Bar website page reflecting Mr. Freeh’s credentials as an attorney currently barred in New York State, dated January 8, 2020.

16. I am generally familiar with the production made in this action by Mr. Freeh and his two companies (Freeh Group International Solutions, LLC and Freeh Sporkin Sullivan LLP) (the “Freeh Production”) to Defendants on December 17, 2019, bearing production numbers K VW\_00000001–K VW\_00000551, as well as the responses and objections served with the Freeh Production. Based on my review, as well as information provided to me by my team:

- a. the Freeh Production contains approximately 550 pages of documents;
- b. Mr. Freeh and his two companies made the Freeh Production only to Defendants and their counsel, not to Plaintiffs and their counsel, and I understand from statements made during Mr. Freeh’s deposition that this was done out of concern that much of the Freeh Production consisted of privileged and confidential documents;

1 c. the Freeh Production contains many emails and other communications  
2 from Mr. Freeh to Defendants' employees or outside counsel that were marked contemporaneously as  
3 "privileged" and/or "confidential";

4 d. the Freeh Production contains approximately 100 separate email messages  
5 between Mr. Freeh and Ms. Hohmann-Dennhardt, sent between November 4, 2015 and March 30, 2016;

6 e. the Freeh Production contains approximately 45 separate email messages  
7 between Mr. Freeh and Robert J. Giuffra, Jr., Volkswagen AG's lead outside counsel in the United States,  
8 sent between January 13, 2016 and January 28, 2016;

9 f. the Freeh Production contains at least three separate email conversations  
10 between Mr. Freeh and Matthias Muller, the former CEO of Volkswagen AG, between January 8 and 12,  
11 2016;

12 g. the Freeh Production contains an email exchange between Mr. Giuffra and  
13 Mr. Freeh on January 16, 2016 in which Mr. Freeh shared his view on steps the company should take in  
14 connection with the then-ongoing internal investigation by counsel for Volkswagen AG's Supervisory  
15 Board, as well as steps to preserve information potentially relevant to that investigation;

16 h. the Freeh Production contains an email from Mr. Giuffra to Mr. Freeh,  
17 dated January 16, 2016, in which Mr. Giuffra sent Mr. Freeh a privileged and confidential memorandum  
18 authored by one of the company's outside counsel regarding the diesel emissions matter, as well as a  
19 January 17, 2016 response email from Mr. Freeh in which Mr. Freeh shared his views on the  
20 memorandum and his advice on potential implications for the company's diesel-related investigations  
21 and lawsuits;

22 i. the Freeh Production contains an email from Mr. Giuffra to Mr. Freeh,  
23 dated January 16, 2016, in which Mr. Giuffra sent Mr. Freeh a document discovered during the course  
24 of the internal investigation, along with Mr. Giuffra's views on the potential implications of that  
25 document, and I am informed and believe that this document is a version of the same document attached  
26 as Exhibit 7 to Mr. Freeh's December 2, 2019 expert report; and  
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1 j. the Freeh Production contains an email from Mr. Freeh to Mr. Giuffra on  
2 January 16, 2016 that responds to Mr. Giuffra's January 16 email, in which Mr. Freeh shared his own  
3 views on the implications of the same document.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed in New York, New York on January 13, 2020.

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7 /s/ William B. Monahan

8 William B. Monahan  
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